Schnapper, (1928) Ch. p. 420, that the intestate's son Kazi Mohamed Shirazil Anwar, who is over the age of 18 years, can give a good discharge to the administrator for his share in the intestate's estate.

I also direct that the administrator be at liberty to expend out of the share of the intestate's infant daughter Maksura a sum not exceeding $2,000 for her marriage expenses and for the purchase of suitable jewelry and for the provision of a dowry in view of her intended marriage.

The costs of all parties will be taxed as between solicitor and client and paid out of the intestate estate.

Order accordingly.

Solicitors for the Plaintiff—*Rodyk & Davidson.*

Solicitors for the Defendant—*Chan & Eber.*

[ORIGINAL CIVIL JURISDICTION]

McELWAINE, C.J.

January 21, 1938.

RE W. S. BEE & CO.

[SINGAPORE BANKRUPTCIES Nos. 59 & 60 of 1937.]

Bankruptcy Costs—R. 76(3)—General reg. 1 of R. VII of "Rules regarding Solicitors' costs in bankruptcy."

General reg. 1 of R. VII of the "Rules regulating solicitors' costs in bankruptcy" in the Appendix to the Bankruptcy Rules (formerly General reg. 1 of r. VII in Part II of the Appendix to the Bankruptcy Rules) is a governing provision for all costs in bankruptcy proceedings and the costs payable in such proceedings are to be allowed on the lower scale contained in Schedule C to the Rules of the Supreme Court 1934 save as in the scale provided in the Rules as to costs in the Appendix to the Bankruptcy Rules.

ADJOURNED MOTION.

Koek, for the applicant on the motion.

E. B. Williams, Official Assignee, in person.

Cur. Adv. Vult.

MCELWAINE, C. J.—I allowed the appeal in this matter against the Official Assignee's rejection of proofs.

Mr. Koek for the successful appellant asked that he should be awarded costs on the Supreme Court Higher scale. He referred to Bankruptcy r. 76(3). The Official Assignee on the other hand argued that the highest costs that should be awarded should be such as accord with the Supreme Court lower scale. He referred me to Part II of the Appendix printed with the Bankruptcy rules, particularly "VII General Regulations 1" at page 233.*

Bankruptcy r. 76 appears to occasion difficulty and I gather that sub-r. 1 at any rate has long been regarded as a dead letter. That subrule as I understand it related to ordinary bankruptcy costs and it prescribes that the fees, percentages and costs should be based on the English scale on the basis of one dollar being taken as the half of the common solicitors' fee of 6/8. In 1887 and 1888 the dollar rate was over 3/-.

The bankruptcy rules at present in force were made in 1897. R. 76 is identical with r. 76 of the rules of 1888 made under the Ordinance of 1888.

The 1888 rules were made by the Governor in Council as the rule making authority under ss. 114 and 115 of the Ordinance as it then stood, was the Governor in Council. These sections correspond with ss. 120 and 121 of the Bankruptcy Ordinance (Chapter 45). No special bankruptcy costs rules appear to have been made in 1888 so by virtue of r. 76, sub-r. 1 the English tariff applied, modified, as I have pointed out, by the special sterling equivalent of the dollar prescribed for the conversion of the English sums into Colony money.

The scale of Solicitors' costs in England in 1888 may be found in *Lee and Wace's* Law & Practice in Bankruptcy 1887 Ed. at page 784.

The rules published as Part II of the Appendix to the Bankruptcy Rules 1897 were made in 1894 by the Governor in Council under ss. 114 and 115 of the Ordinance. They appear to follow closely the scale set out in *Lee and Wace.*

These rules of 1894 appear to me to have had the effect of repealing the whole of r. 76 of the rules of 1888.

The Bankruptcy (Amendment) Ordinance of 1896 amended s. 114 of the Ordinance of 1888 by empowering the Judges of the Supreme Court with the approval of the Governor in Council to make the general rules under s. 114.

It is not obvious to me what power the Judges had in 1897 to make r. 76, a rule which came under s. 115 and not under s. 114, and it seems to me to be not improbable that the present r. 76 was copied *per incuriam* from the rules of 1888 when the rules of 1897 were made.

An appeal against a rejection of a proof is clearly a proceeding under the Bankruptcy Ordinance and the rules and in such proceedings it appears to me that costs are governed by the Governor in Council's rules made under s. 115 in

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* His Lordship was referring to "The Bankruptcy Ordinance, 1888, and the rules thereunder" compiled by A. de Mello printed in 1916, in which the scale of bankruptcy costs was contained in Part II of the Appendix. This scale and the rules relating thereto are now reprinted in the Appendix to the Bankruptcy Rules 1897, under the heading, Rules made by His Excellency the Governor in Council under ss. 114 and 115 of "The Bankruptcy Ordinance, 1858" regarding Solicitors' Costs in Bankruptcy.

1894 now Part II of the Appendix to the Bankruptcy Rules of 1897, and that "General Regulation" 1 printed at page 233 of the Volume of Rules is a governing provision for all costs in Bankruptcy proceedings and that the costs payable in such proceedings are to be allowed on the scale contained in the second column (i.e. lower scale) in the schudule to the rules and orders on costs under the Courts Ordinance 1878 made on the 22nd June 1887 and published in Garrard's revision of the Ordinances Vol. II Appendix p. 13 unless such costs are provided for in the earlier parts of the rules of 1894 (or Part II of the Appendix II to the rules of 1897). I would point out that General reg. 1 above referred to follows closely the similar regulation at page 790 of *Lee & Wace.*

The costs in Orders & Rules printed in the Appendix to Vol. II of Garrard's revision have long been out of date. Whether they were repealed earlier than 1907 I have not enquired but they certainly did not survive the Civil Procedure Code of that year which itself has been repealed and the scale of costs now corresponding to those in Garrard are to be found in Schedule C of the Rules of the Supreme Court 1934 made under the Courts Ordinance 1934 (Now Chapter 10 of the Laws of the Straits Settlements).

As the costs rules have always provided for a higher and a lower scale s. 5(e) of the Interpretation Ordinance (Chapter 2) applies and "General Regulation" 1 in Part II of the schedule of the Bankruptcy Rules must now be taken as directing that costs save as in the scale provided in Part II shall be allowed on the Lower scale contained in schedule C to the Rules of the Supreme Court 1934.

Whether this scale applies in the case of ordinary actions taken by the Official Assignee it is not necessary now to consider but reference may be made to *Watson* v. *Holliday*, 20 Ch. 780. I am dealing with proceedings which are purely proccedings in bankruptcy.

The Official Assignee is not liable personally for these costs (r. 187).

I therefore order the Official Assignee to pay to the appellant's solicitors the appellant's costs of this appeal taxed on the lower scale in schedule C to the Rules of the Supreme Court 1934, and that such taxed costs be paid, half from the joint estate of W. S. Bee & Company and half from the separate estate of Tay Kim Soon.

Order accordingly.

Solicitors for the applicant:—*Chan & Eber.*

[ORIGINAL BANKRUPTCY JURISDICTION]

McELWAINE, C.J.

March 9, 1938.

RE MANICKAM AMMAL (Widow).

[SINGAPORE BANKRUPTCY No. 20 of 1932]

Husband and Wife—Promissory Note signed by wife during coverture—Judgment thereon after death of husband—Form of judgment against married woman or widow—Separate property — Bankruptcy Notice—Non-compliance therewith not an "act of bankruptcy"—Bankruptcy Petition—Rescission of Receiving Order and Annulment of Adjudication Order—Married Women's Property Ordinance, sect. 4—Bankruptcy Ordinance, sects. 3 (1) (i), 90 (1), 104 and 117—Bankruptcy Rules 92, 99 seq.

Since the enactment in 1902 in this Colony* of the Married Women's Property Ordinance, which is based on the Married Women's Property Acts of 1882 and 1893 in England, a judgment recovered against a widow upon a Promissory Note signed, or contract entered into, by her during coverture cannot be in the ordinary form as though she were a *feme solc*, but in the form settled by the Court of Appeal in England in *Scott* v. *Morley*, (1887) 20 Q.B.D. 132.

Pelton v. *Harrison*, (1891) 2 Q.B. 422: *Softlaw* v. *Welch*, (1899) 2 Q.B. 419; *Barnett* v. *Howard* (1900), 2 Q.B. 75; and *Brown* v. *Dimbleby*, (1904) 1 K.B. 28, followed.

Such judgment not being against the widow personally but against her separate property, the judgment-creditor cannot, by reason of section 117, Bankruptcy Ordinance, issue a Bankruptcy Notice nor a Bankruptcy Petition against her, alleging as an "act of bankruptcy" her non-compliance with such notice. Consequently, Receiving and Adjudication Orders pronounced upon such Petition will be respectively rescinded and annulled.

Re Lynes, (1893) 2 Q.B. 113; *Re Hewett*, (1895) 1 Q.B. 328, followed.

The local rulings in *re Virginia Miles*, (1904) 8 S.S.L.R. 18 and *re Lim Quee Geok*, (1934) S.S.L.R. 331; 4 M.L.J.3 to the effect that a married woman must be shown to have separate property before a Receiving or Adjudication Order is made against her, apply equally to the case of a widow.

MOTION.

Motion by a widow for rescission of the Receiving Order, and annulment of the Adjudication Order, made against her on a money-lender's Petition the 12th February 1932.

The Applicant (widow of S. Rajagopal, who died in 1931) had signed, together with her husband and her brother-in-law, S. Vadiveloo on the 6th August 1930 a Promissory Note in favour of a money-lender, P. L. M. M. Meyappa Chitty, all the signatories promising jointly and severally to repay the sum of $180 by ten monthly instalments of $18 each, beginning the 6th Sept. 1930, with interest at the rate of 24 per cent. per annum from the date of default.

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* The references in the present Report to the Ordinances of the Colony are, for convenience, to the "Laws of the Straits Settlements, 1936 Edition," although, in fact, the 1926 Edition was in force when this bankruptcy began (Feb. 1932) *Ed. M.L.J.*